

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BOARD OF TRUSTEES OF THE  
 CONSTRUCTION INDUSTRY & LABORERS  
 HEALTH & WELFARE TRUST, et al.,

Plaintiff(s),

vs.

PANACEA SERVICES LLC, et al.,

Defendant(s).

Case No. 2:14-cv-02047-RCJ-NJK

**ORDER DENYING MOTION FOR  
 SERVICE BY PUBLICATION AND  
 GRANTING MOTION FOR  
 EXTENSION OF TIME**

(Docket Nos. 6, 8)

Pending before the Court is Plaintiffs' motion for an extension to serve Defendant Evon Kanagin ("Defendant") and for leave to serve Defendant by publication. Docket Nos. 6, 8.<sup>1</sup> The Court finds the motion properly resolved without oral argument. *See* Local Rule 78-2. For the reasons discussed below, the motion is hereby **GRANTED** in part and **DENIED** in part.

A. Service by Publication

The pending motion seeks an order allowing Plaintiffs to complete service by publication on Defendant. Service by publication implicates a defendant's fundamental due process rights. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Price v. Dunn*, 787 P.2d 785, 787 (Nev. 1990). As a result, service by publication is disfavored. *See, e.g., Trustees of the Nev. Resort Assoc.-Int'l Alliance of Theatrical Stage Employees & Moving Picture Machine Operators v. Alumifax, Inc.*, 2013 U.S. Dist. Lexis. 106456, \*2 (D. Nev. July 29, 2013).

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<sup>1</sup> This motion appears to have been filed twice.

1 Federal Rule of Civil Procedure 4(e)(1) provides for service “pursuant to the law of the state in  
 2 which the district court is located, or in which service is effected.” Under Nevada Rule of Civil  
 3 Procedure (“NRCP”) 4, parties are required to personally serve summons and the complaint upon  
 4 defendants. When personal service proves impossible, however, NRCP 4(e)(1)(i) provides that a party  
 5 may file a motion for service by publication when the opposing party “resides out of the state, or has  
 6 departed from the state, or cannot, after due diligence be found within the state, or by concealment seeks  
 7 to avoid the service of summons.” When service of the summons is made by publication, the summons  
 8 shall, in addition to any special statutory requirements, also contain a brief statement of the object of the  
 9 action. NRCP 4(b).

10 A party moving for service by publication must seek leave of court by filing an affidavit  
 11 demonstrating she diligently attempted to personally serve the defendant. There are several factors  
 12 courts consider to evaluate a party’s due diligence, including the number of attempts made to serve the  
 13 defendants at their residence and other methods of locating defendants, such as consulting public  
 14 directories and family members. *See Price*, 787 P.2d at 786-87; *Abreu v. Gilmer*, 985 P.2d 746, 747  
 15 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994).

16 The Court finds the present record insufficient to order service by publication. Plaintiffs assert  
 17 that they attempted to serve Defendant at her last known business address without success. *See Ring*  
 18 *Aff.* at ¶¶ 4-5. Plaintiffs assert that they then identified a residential address and attempted to serve  
 19 Defendant at that alternative address without success. *See id.* at ¶¶ 6-7.<sup>2</sup> Plaintiffs also imply that their  
 20 counsel had planned to seek acceptance of service for Defendant through an attorney, but could not do  
 21 so because that attorney is not representing Defendant. *See id.* at ¶ 9. In essence, Plaintiffs assert that  
 22 they have twice attempted personal service on Defendant and reached out to her former attorney  
 23 regarding possible acceptance of service. Especially given the disfavored nature of service by  
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 26 <sup>2</sup> Plaintiffs’ counsel refers to a “conversation with an employee of Defendant” from which they  
 27 conclude that she is avoiding service. *See id.* at ¶ 8. Plaintiffs’ process server also filed a declaration  
 28 outlining that conversation. *See Aff. of Attempted Service* at ¶ 6. The Court finds the record insufficient  
 to establish that Defendant is purposefully evading service.

1 publication and the due process rights involved, the Court finds such efforts insufficient to show that  
2 service by publication should be allowed.

3 B. Extension

4 Where good cause is shown, the time for serving the complaint is extended for an appropriate  
5 period. *See* F.R.C.P. 4(m). The Court finds good cause exists for a an extension to June 29, 2015 to  
6 conduct further due diligence in attempting to serve Defendant.

7 C. Conclusion

8 For the reasons discussed more fully above, the pending motion is **GRANTED** in part and  
9 **DENIED** in part. Plaintiffs' motion for an order allowing service by publication is **DENIED** without  
10 prejudice. Nonetheless, Plaintiffs' motion for an extension is **GRANTED** and the deadline to serve  
11 Defendant is hereby **EXTENDED** to June 29, 2015. If Plaintiffs are unable to serve Defendant by that  
12 date, they may file a renewed motion for service by publication explaining in detail the steps that have  
13 been taken to locate and serve Defendant.

14 IT IS SO ORDERED.

15 DATED: April 29, 2015

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19 NANCY J. KOPPE  
20 United States Magistrate Judge  
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